

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>MIKE SHALES, JOHN BRYAN Sr., AL</b>	)	
<b>OROSZ, JOSEPH MANN, TOBY KOTH and</b>	)	
<b>GORDON ANDERSON as Trustees of THE</b>	)	
<b>FOX VALLEY LABORERS' HEALTH AND</b>	)	
<b>WELFARE FUND,</b>	)	
	)	
<b>and</b>	)	
	)	<b>Case No. 07 C 929</b>
<b>MIKE SHALES, JOHN BRYAN Sr., AL</b>	)	
<b>OROSZ, TOBY KOTH, GORDON</b>	)	
<b>ANDERSON and DAN BREJC as Trustees of</b>	)	
<b>THE FOX VALLEY LABORERS' PENSION</b>	)	
<b>FUND,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>Judge Coar</b>
	)	
<b>v.</b>	)	
	)	
<b>RICHARD M. TEE EXCAVATING, a general</b>	)	<b>Magistrate Judge Nolan</b>
<b>partnership, RICHARD M. TEE, individually</b>	)	
<b>and as partner of RICHARD M. TEE, and</b>	)	
<b>JOHN KANIA, individually and as partner of</b>	)	
<b>RICHARD M. TEE EXCAVATING,</b>	)	
	)	
<b>Defendants.</b>	)	

**PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT AND**  
**JUDGMENT IN SUM CERTAIN**

Plaintiffs, MIKE SHALES, JOHN BRYAN Sr., AL OROSZ, JOSEPH MANN, TOBY KOTH and GORDON ANDERSON as Trustees of THE FOX VALLEY LABORERS' HEALTH and WELFARE FUND ("Welfare Fund") and MIKE SHALES, JOHN BRYAN Sr., AL OROSZ, TOBY KOTH, GORDON ANDERSON and DAN BREJC as Trustees of THE FOX VALLEY LABORERS' PENSION FUND ("Pension Fund") (collectively, "the Funds"), by and through their attorneys, Dowd, Bloch & Bennett, pursuant to Fed.R.Civ.P. 55(b)(2),

respectfully move this court for entry of default and judgment in sum certain, in the form of the attached proposed order, against Defendants, RICHARD M. TEE EXCAVATING (“Defendant Company”), a general partnership, RICHARD M. TEE (“Tee”), individually and as partner of RICHARD M. TEE EXCAVATING, and JOHN KANIA (“Kania”), individually and as partner of RICHARD M. TEE EXCAVATING. In support of this motion, Plaintiffs state as follows:

1. This action is a claim for delinquent reports and contributions due to employee fringe benefit funds under Section 515 of ERISA, 29 U.S.C. §1145 and for delinquent union dues and industry fund contributions under Section 301 of the Labor-Management Relations Act, 29 U.S.C. §185.

2. The Funds filed a Complaint on February 16, 2007, seeking the following from the Defendant Company, TEE, and KANIA (collectively “the Defendants”):

- (a) Finding that the Defendants are liable to the Funds and Affiliated Organizations for the delinquent contributions owed to date, interest, liquidated damages, and attorneys’ fees and costs;
- (b) Ordering the Defendants, jointly and severally, to pay to Plaintiffs all delinquent contributions, accrued interest and liquidated damages from June 2006 and continuing through the present, all accrued delinquencies after the filing of this suit;
- (c) Ordering the Defendants to file with the Funds monthly contribution reports for the work months of August 2006 to present listing the employees, hours worked and contributions due to each Fund and the Affiliated Organizations, and further providing all information as required by the rules of the Funds and the Affiliated

Organizations;

(d) Ordering the Defendants to pay to Plaintiffs all reasonable attorneys fees and costs incurred in pursuing collections;

(e) Ordering the Defendants to pay to the Plaintiffs all moneys they failed to properly withhold and remit to the District Council from June 2006 and continuing through the present, plus late fees at a rate of 10%; and

(f) For such other legal or equitable relief as the Court deems just and proper.

3. Each Defendant was served with a copy of the Complaint and Summons on February 27, 2007. Return of Service for each Defendant was filed with the Clerk of the Court on March 5, 2007. (Group Exhibit "A")

4. As of the date that this Motion was filed, none of the Defendants had filed an appearance or answer or otherwise plead to the Complaint.

5. The Defendants have failed to timely submit monthly contribution reports and payments to the Funds for the months of August 2006 through January 2007 and to the Affiliated Organizations for periods beginning June 2006 and continuing through January 2007.

6. The Defendants have also failed to properly deduct, report and remit union dues from employees' wages to the District Council for the months of June 2006 through January 2007.

7. Additionally, the Defendants failed to timely report and remit its contributions and reports to the Funds for the months of June 2006 and July 2006, and as a result have incurred accrued interest and liquidated damages for those months.

8. Despite demands made by the Funds, the Defendants have refused to submit payment to the Funds.

9. Pursuant to the Funds' Trust Agreements and the labor agreements, Employers who fail to report and/or remit contributions are liable to pay interest on the delinquent contributions, an additional 10% in liquidated damages, which increases to 20% once a lawsuit is filed, and all costs of collection, including reasonable audit expenses, interest (12% annually), attorneys' fees, and costs. Pursuant to the Agreement, delinquent contributions to the Affiliated Organization and delinquent dues, incur liquidated damages of 10%.

10. The Defendants are therefore liable to the Plaintiffs for contributions, dues, interest, liquidated damages and attorneys's fees and costs.

11. Based on reports remitted to the Funds for the period of June 2006 through January 2007, the Defendants owe the following amounts for delinquent contributions, interest, liquidated damages, dues, accrued interest and liquidated damages, but not including attorneys' fees and costs, which are also due:

Contributions (08/06-01/07)	\$ 8,704.08
Liquidated Damages @ 20%	\$ 1,740.82
Dues (06/06-01/07)	\$ 906.17
Liquidated Damages @ 10%	\$ 90.62
Accrued LDs/Interest	\$ 633.11
<b>Total</b>	<b>\$12,074.80</b>

See Exhibit "B" Affidavit of Patricia Shales

12. The Defendants have also failed to submit reports and contributions/dues to the Plaintiffs for the month of February 2007, which are also past due. Defendants are therefore also liable for the unpaid contributions plus 20% liquidated damages, dues plus 10% liquidated damages, and interest at a rate of 12% annually, which are to be determined, for the month of February 2007.

13. Based on the amount of work Plaintiffs' counsel has completed to date and the work Plaintiffs' counsel anticipates doing in the future to bring this matter to conclusion, the Plaintiffs have incurred or will incur attorneys' fees and costs in the amount of \$2,814.83. See Exhibit "C" Affidavit of LaKisha M. Kinsey-Sallis.

14. Accordingly, the Plaintiffs are entitled to recover a total of \$14,889.63 through the delinquent month of January 2007 plus amounts as determined to be due and owing for the period of February 2007.

WHEREFORE, for the reasons stated above, Plaintiffs respectfully request this Court enter a judgment by default jointly and severally against RICHARD M. TEE EXCAVATING ("Defendant Company"), a general partnership, RICHARD M. TEE ("Tee"), individually and as partner of RICHARD M. TEE EXCAVATING, and JOHN KANIA ("Kania"), individually and as partner of RICHARD M. TEE EXCAVATING, on all three counts set forth in the Complaint, in the form provided in the attached proposed order, in the amount of \$14,889.63, and order the Defendants to submit complete and accurate work reports for February 2007 within 10 days of entry of the order, to pay all delinquent contributions, dues, interest, and liquidated damages for February 2007 as to be determined, and request that the Court set this matter for a prove-up hearing with respect to the additional relief sought following the submission of contribution and dues reports.

Respectfully Submitted,

/s/ LaKisha M. Kinsey-Sallis  
LaKisha M. Kinsey-Sallis  
One of the Plaintiffs' Attorneys

J. Peter Dowd  
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